

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS

TYLER DIVISION

EDDIE FRANK HOLCOMB, #123301

§

VS.

§

CIVIL ACTION NO. 6:19cv300

GREGG COUNTY JAIL, ET AL.

§

**ORDER ADOPTING REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE**

Plaintiff Eddie Holcomb, an inmate currently incarcerated at the Gregg County Jail, is proceeding *pro se* and *in forma pauperis* in the above styled and numbered civil rights lawsuit. The complaint was referred to the United States Magistrate Judge, the Honorable John D. Love, for findings of fact, conclusions of law, and recommendations for the disposition of the case.

On September 18, 2019, Judge Love issued a Report (Docket No. 10) recommending that Plaintiff's civil rights lawsuit be administratively closed because of pending criminal charges out of Gregg County. Judge Love reasoned that Plaintiff should be permitted to ask the Court to place the case back on the active docket if and when criminal charges are dismissed or resolved in his favor. Judge Love further recommended that if Plaintiff Holcomb is convicted or the criminal charges are resolved against him, the case should be dismissed pursuant to *Heck v. Humphrey*, 512 U.S. 477, 486 (1994).

Moreover, because Plaintiff Holcomb raised separate claims from those concerning his criminal charges—claims concerning his medical treatment—Judge Love recommended that the medical claims be severed into a new, separate lawsuit.

A copy of this Report was sent to Plaintiff at his address, the Gregg County Jail, return receipt requested. To date, however, no objections to Judge Love's Report have been received. Consequently, because no objections to Judge Love's Report have been filed, Plaintiff Holcomb is barred from *de novo* review by the District Judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to proposed factual findings and legal conclusions accepted and adopted by the district court. *Douglass v. United Services Auto. Ass'n.*, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has reviewed the pleadings in this cause and the Report of the Magistrate Judge. Upon such review, the Court has determined that the Report of the Magistrate Judge is correct. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir.), *cert. denied*, 492 U.S. 918, 109 S.Ct. 3243 (1989) (holding that where no objections to a Magistrate Judge's Report are filed, the standard of review is "clearly erroneous, abuse of discretion and contrary to law."). Accordingly, it is


ORDERED that the Report of the United States Magistrate Judge (Docket No. 10) is **ADOPTED** as the opinion of the Court. Further, it is

ORDERED that this cause of action, cause number 6:19-cv-300, is **ADMINISTRATIVELY CLOSED**. Plaintiff Holcomb is permitted to ask the Court to place the case back on the active docket if and when the criminal charges against him are dismissed or resolved in his favor. If, however, Plaintiff is convicted or the charges are resolved against him, the case should be dismissed pursuant to *Heck*. Additionally, the case will be dismissed if the Court has not heard from Plaintiff Holcomb concerning these claims within two years of the entry of this order of administrative closing. Finally, it is

ORDERED that Plaintiff Holcomb's medical claims are hereby **SEVERED** into a separate, new lawsuit. The Clerk of Court is instructed to issue a new case number and shall copy

the pleadings in this case number, 6:19-cv-300, into the new case number. Due to the unique circumstances of this case, no filing fee will be assessed for the new case concerning his medical care.

So **ORDERED** and **SIGNED** this **25th** day of **November, 2019**.



JEREMY D. KERNODLE
UNITED STATES DISTRICT JUDGE